

STATE OF MICHIGAN
COURT OF APPEALS

AILEEN GOMERY,

Plaintiff/Counter-Defendant-
Appellee,

v

CREST FINANCIAL, INC., and LINDA
DARGIS-GIROUX,

Defendants/Counter-Plaintiffs-
Appellants.

UNPUBLISHED

June 19, 2007

No. 264906

Leelanau Circuit Court

LC No. 02-005951-CZ

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court's order awarding costs and attorney fees to plaintiff. Because defendants seek only to revive issues raised and rejected in their earlier appeal under the identical facts, we reject their arguments in deference to this Court's earlier judgment and affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Defendants, a mortgage broker and its vice president, terminated plaintiff's at-will employment in 2002. Although defendants put forward a litany of performance-related reasons for this, the termination occurred one week after plaintiff had threatened to contact the Department of Labor over an alleged failure to pay her commissions as agreed. Plaintiff brought suit, her allegations including that she was terminated in violation of the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.* Following a three-day trial, the jury specifically found that plaintiff had been terminated in violation of the WPA, that she had suffered \$9,000 in economic damages, that the latter amount should be reduced by \$4,500 for her failure to mitigate, and that she would suffer \$500 in future noneconomic damages. These findings added up to a total damages award of \$5,000. To this the trial court added an award of \$35,715 in attorney fees, pursuant to MCL 15.364.

In the appeal by right that followed, this Court affirmed in part, but vacated the award of attorney fees. *Gomery v Crest Financial, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued March 22, 2005 (Docket No. 250881). This Court held that plaintiff "was a prevailing party because the judgment in her favor exceeded defendant's \$500 offer of

judgment,” and that “the amount sought by plaintiff during settlement negotiations is immaterial.” *Id.*, slip op at 2. This Court added, “A trial court *may* reduce an award of attorney fees on the basis of a plaintiff’s limited success, but is not required to do so,” and that, accordingly, the trial court in this case “did not abuse its discretion by failing to limit plaintiff’s award of attorney fees based solely on her limited success at trial.” *Id.*, slip op at 3.

However, this Court agreed that the trial court failed to consider the various factors that determine the reasonableness of an award of attorney fees, and so remanded the case to the trial court to allow the court to make findings of fact regarding the reasonableness of the awarded fees. *Gomery, supra*, slip op at 3-4 and n 11, citing *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982). This Court did not retain jurisdiction. On remand, the trial court issued a several-page opinion and order, detailing its reasoning then reiterating its original fee award.

We review a trial court’s award of attorney fees for an abuse of discretion. *In re Condemnation of Private Property for Highway Purposes*, 221 Mich App 136, 139-140; 561 NW2d 459 (1997). An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes. *Herald Co v Eastern Michigan Univ Bd of Regents*, 475 Mich 463, 467; 719 NW2d 19 (2006).

Defendants’ statement of the question presented for this appeal challenges the award on the grounds that plaintiff’s cause of action was weak, that the jury rendered a verdict of only \$5,000 whereas plaintiff had demanded several times that in settlement negotiations, and that the trial court refused to consider the degree of success plaintiff’s attorney had achieved. In arguing the point, defendants characterize the verdict as “**CLEARLY A DEFENSE VERDICT**” and insist repeatedly that the trial court erred in refusing to decrease the award in light of plaintiff’s limited success in winning damages. But this Court already ruled on those aspects of the case, expressly holding, as summarized above, that plaintiff was a prevailing party, and that the trial court did not abuse its discretion in not reducing the fee award in light of plaintiff’s limited success at trial. Those holdings are the law of the case, and are not subject to reconsideration here. “Under the law of the case doctrine, an appellate court ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue.” *Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997). “The law of the case mandates that a court may not decide a legal question differently where the facts remain materially the same.” *Id.* Because defendants seek only to revive issues raised and rejected in their earlier appeal, under the identical facts, we must reject their arguments in deference to this Court’s earlier judgment.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio